



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 7, 1998

Mr. Ron Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR98-0910

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114080.

The Texas Department of Public Safety (the "department") received a request for all documents, videos and photographs of a specific accident. You claim that the requested information is excepted from required public disclosure by section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information at issue.

Section 552.108 of the Government Code provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

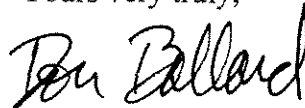
Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the department officer "is compiling a file of his investigation in order to have it presented for criminal charges for criminally negligent homicide." This office has also been informed that criminal charges have been returned in connection with the accident. We understand that you are arguing that release of the requested information would interfere with law enforcement because the investigation or prosecution is currently ongoing. Given this assumption, you have shown that the release of the requested information would interfere with the detection, investigation or prosecution of crime. Thus, we conclude that the requested information may be withheld under section 552.108(a)(1). *See* Open Records Decision No. 216 (1978).

A concerned party, however, has notified this office that the department has already released a copy of the accident photographs to Mr. John Hubble. Once a governmental body has selectively disclosed information to one member of the public, it is ordinarily precluded

from invoking exceptions to disclosure under the Open Records Act. Open Records Decision No. 454 (1986). A governmental body may not practice selective disclosure. Gov't Code § 552.007(a); Open Record Decision Nos. 490 (1988), 464 (1987), 463 (1987), 192 (1978). Consequently, if the department has previously released the photographs, you must also release them to the requestor. If you have not previously released them, you may withhold them pursuant to section 552.108.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 114080

Enclosures: Submitted documents

cc: Ms. Michelle Lusk
Touchstone, Bernays, Johnston, Beall & Smith
4700 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270-2196
(w/o enclosures)

Mr. R. Wayne Gordon and
Mr. L. Kendall Howell
Touchstone, Bernays, Johnston, Beall & Smith
4700 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270-2196
(w/o enclosures)